IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOSE TRUJILLO, individually and on behalf of all others similarly situated, Plaintiff, vs. APPLE COMPUTER, INC., a California Corporation, and AT&T MOBILITY LLC, a Georgia Corporation, Defendants.	)	Case No. 1:07-cv-04946 Judge Kennelly Mag. Judge Ashman

MOTION OF DEFENDANT AT&T MOBILITY LLC FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56, Defendant AT&T Mobility LLC ("ATTM") respectfully moves for summary judgment on all of Plaintiff Jose Trujillo's claims against it. In support of this motion, ATTM submits the contemporaneously filed Memorandum of Law, Rule 56.1 Statement of Undisputed Material Facts, and Declaration of Caroline Mahone-Gonzalez, and further states as follows:

1. On July 2, 2007, plaintiff Jose Trujillo purchased an iPhone from a retail store owned and operated by defendant Apple Computer, Inc. ("Apple"), the manufacturer of the iPhone.

2. On July 26, 2007, plaintiff Jose Trujillo filed a putative class-action complaint against Apple and AT&T, Inc. in the Chancery Division of the County Department of the Circuit Court of Cook County, alleging that the manner in which the defendants disclosed the details of Apple's battery-replacement program for the iPhone he purchased at the Apple store violates the

Dockets.Justia.com

Illinois Consumer Fraud and Deceptive Practices Act, 815 ILCS 505/1 *et seq.* He also raises a variety of common-law and breach-of-warranty claims.

4. On August 31, 2007, Apple timely filed a Notice of Removal to this Court.

5. On September 6, 2007, Trujillo filed an Amended Complaint substituting ATTM as a defendant for AT&T, Inc.

6. On September 23, 2008, the Court granted summary judgment to Apple on all of Trujillo's claims because, among other reasons, Apple in fact did disclose all of the allegedly concealed facts.

7. The same reasons that led this Court to reject Trujillo's claims against Apple also militate in favor of granting summary judgment to ATTM. In addition, ATTM is entitled to summary judgment on all of Trujillo's claims because ATTM was not a party to the underlying iPhone sales transaction.

WHEREFORE, ATTM respectfully requests, pursuant to Federal Rule of Civil Procedure 56, that this Court grant summary judgment to ATTM on all claims against it.

Dated: January 9, 2009

Respectfully submitted,

/s/ Sarah E. Reynolds

Victoria Collado (#6204015)
Sarah E. Reynolds (#6287186)
Emily Emerson (#6292773)
MAYER BROWN LLP
71 South Wacker Drive
Chicago, IL 60606
Tel: (312) 782-0600
Fax: (312) 263-7711

Evan M. Tager (*pro hac vice*)
Archis A. Parasharami (*pro hac vice*)
Kevin Ranlett (*pro hac vice*)
MAYER BROWN LLP

1909 K Street, N.W.
Washington, DC 20006
Tel: (202) 263-3000
Fax: (202) 263-5000

Attorneys for Defendant AT&T Mobility LLC

CERTIFICATE OF SERVICE

I, Emily M. Emerson, an attorney, hereby certify that on January 9, 2009, I electronically filed the foregoing **MOTION OF DEFENDANT AT&T MOBILITY LLC FOR SUMMARY JUDGMENT** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

James R. Rowe
THE LAW FIRM OF JAMES R. ROWE & ASSOCIATES
205 West Randolph, Suite 1430
Chicago, IL 60603
(312) 345-1357
rowelegal@gmail.com

Larry D. Drury
LARRY D. DRURY, LTD.
205 West Randolph, Suite 1430
Chicago, IL 60603
(312) 346-7950
ldrurylaw@aol.com

Patrick T. Stanton
SCHWARTZ COOPER CHARTERED
180 North LaSalle Street, Suite 2700
Chicago, Illinois 60601
pstanton@scgk.com

Penelope A. Preovolos
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, California 94105
ppreovolos@mofo.com

Respectfully submitted,

/s/ Emily M. Emerson

Dated: January 9, 2009

Attorney for Defendant AT&T Mobility LLC